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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,903	09/26/2003	Richard F. Gladney	SMCY-P01-104	8016
28120	7590	10/07/2005	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/671,903

**Applicant(s)**

GLADNEY, RICHARD F.

**Examiner**

Sunil Singh

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 6-28 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-13, 18-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,2,4, 6, 9,18-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarvis (US 2859505).

Jarvis discloses a mattress comprising a head end, a foot end, a first side and a second side and a center region (22, see col. 2 line 30-40) traversing the mattress from the head end to the foot end, the center region including one or more materials that mitigate the emergence of a center ridge over repeated uses of the mattress the center region. The center firmness is increased/decreased (see col. 2 lines 30-40). The center region is separated by an approximately equal distance from the first side and the second side.(see Figs. 1 and 2). The center region having a width of between about 2 inches and about 12 inches (see col. 2 lines 15-20). Jarvis discloses the invention substantially as claimed. However, Jarvis is silent about his mattress being a queen/king size. It goes without saying that queen/king size mattresses are old and well known. It would have been considered obvious to one of ordinary skill in the art to modify Jarvis by making his mattress either queen or king size in order to accommodate a substantially large person.

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3. Claims 1,2, 4, 6-8, 18-22, 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selman et al. or Nunez et al. (US 5579549, 6041459) in view of Farley or Farley (US 5077849, 6003179).

Selman et al. and Nunez et al. both disclose a mattress comprising a head end, a foot end, a first side and a second side (see attached marked up drawings) and a center region (102, 44) traversing the mattress from the head end to the foot end, the center region including one or more materials that mitigate the emergence of a center ridge over repeated uses of the mattress the center region. The center firmness is increased (see col. 3 lines 20-60, col. 4 lines 25-35 respectively). The center region is separated by an approximately equal distance from the first side and the second side.(see Figs. 1 and 2 respectively). (Re claims 7 and 8) the quilted material and upholstery is considered as the members shown in Figs. 1 and 2 respectively. Selman et al. and Nunez et al. both disclose the invention substantially as claimed. However, they are both silent about the center region having a width of between about two inches and about twelve inches. Farley '849 and Farley '179 both teach a center region (207, 26) having a width of between about two inches and about twelve inches (see col. 15, col. 5 respectively). It would have been considered obvious to one of ordinary skill in the art to modify either Selman et al. or Nunez et al. by making the width of the center region about 2-12 inches as taught by either Farley '849 or Farley '179 since such a modification would support the buttocks area adequately of an individual laying parallel to the longitudinal axis of the mattress.

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With regards to the queen/king size limitation, the examiner takes official notice that Queen and King size mattresses are well known and old (see Kentor et al. US 3608107). Therefore, it would have considered obvious to one of ordinary skill in the art to further modify either (once modified) Selman et al. or Nunez et al. to include their respective firmness to either a Queen/King size mattress since different size mattresses are old and well known and it would be a design choice to having varying firmness on full, Queen, King size mattress.

4. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selman et al. or Nunez et al. in view of either Farley '849 or Farley '085 as applied to claim 1 above, and further in view of Klancnik (US 4092749).

Selman et al. or Nunez et al. (once modified) discloses the invention substantially as claimed. However, they are silent about the spring core having a firmness center region increased/reduced relative to other regions of the mattress. Klancnik teaches a core having a firmness center region increased/reduced relative to other regions of the mattress (see col. 5). It would have been considered obvious to one of ordinary skill in the art to further modify either (once modified) Selman et al. or Nunez et al. to include a core having a firmness center region increased/reduced relative to other regions of the mattress as taught by Klancnik since such a modification would support the buttocks area adequately of an individual laying parallel to the longitudinal axis of the mattress.

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5. Claims 9, 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selman et al. or Nunez et al. in view of either Farley '849 or Farley '085 as applied to claim 1 above, and further in view of Talbert et al. or Bonaddio et al. or Fultz et al. (US 4086675, 5537699, 3516901).

Selman et al. or Nunez et al. (once modified) discloses the invention substantially as claimed. However, they lack a foam core having a firmness center region increased/reduced relative to other regions of the mattress. Talbert et al., Bonaddio et al. and Fultz et al. all teach a core having a firmness center region increased/reduced relative to other regions of the mattress (see col. 3; col. 3; col.2 and Figs. 1,6 respectively). It would have been considered obvious to one of ordinary skill in the art to further modify either (once modified) Selman et al. or Nunez et al. by substituting a foam core having a firmness center region increased/reduced relative to other regions of the mattress as taught by Klancnik for the spring core disclosed by either Selman et al. or Nunez et al. since such a modification would support the buttocks area adequately of an individual laying parallel to the longitudinal axis of the mattress.

### ***Response to Arguments***

6. Applicant argues that Jarvis does not teach a queen/king size mattress. In light of such argument, the examiner has provided a new grounds of rejection. See discussion above.

Applicant argues that the mattress of Jarvis is used to prop up a corpse and not designed to mitigate the emergence of a center ridge formation. The intended use of

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Jarvis is immaterial, since applicant claims do not provide any structural difference between his claims and the Jarvis reference.

Applicant argues that the examiner interpretation of head portion and foot portion contradict the orientation provided by Selman et al. and Nunez et al. It should be noted that there is no structure precluding the examiners interpretation of what is the head portion and the foot portion. For example, if one were to lay transversly on a bed, then the portion of the bed where the users head lies would be considered the head portion and the portion of the bed where the users feet lies would be considered the foot portion. The same argument can be made with regards to Farley '179, '849.

In response to applicant's argument that examiner's motivation to combine does not commensurate with the inventions as claimed in Claims 1, 18, 20, 21 and 23, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

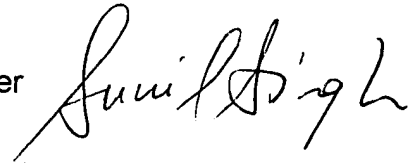
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh  
Primary Examiner  
Art Unit 3673



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9/26/05